

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 193

Citations Affected: IC 5-2; IC 9-13-2-86; IC 11-12-3.7-3; IC 16-31-3-; IC 20-28-5-8; IC 22-15-5-16; IC 25-1-1.1; IC 31-30-1-4; IC 34-24-1-1; IC 35-33-5-5; IC 35-38-2.6-1; IC 35-42-1-1; IC 35-45-6-1; IC 35-46-6; IC 35-47-4-5; IC 35-48-4; IC 35-50-2-2.

Synopsis: Controlled substances. Permits the destruction of chemically contaminated equipment used in the illegal manufacture of a controlled substance if certain conditions are met. Provides that a law enforcement officer has the right to inspect a retailer's log of ephedrine or pseudoephedrine sales. Prohibits a person from selling or releasing a log or the records from the completion of a log for commercial purposes. Allows the Indiana criminal justice institute to obtain information concerning a log or the records from the completion of a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. Prohibits the possession of two or more precursors with the intent to manufacture a controlled substance, and makes the possession of anhydrous ammonia with the intent to manufacture amphetamine a Class D felony that may be enhanced under certain circumstances. Requires a law enforcement agency that discovers a child less than 18 years of age at a drug laboratory to notify the department of child services. Defines "methamphetamine abuse" and requires law enforcement agencies to report methamphetamine abuse to the criminal justice institute. Removes methamphetamine from the crimes of: (1) dealing in cocaine, a narcotic drug, or methamphetamine; and (2) possession of cocaine, a narcotic drug, or methamphetamine; and establishes new crimes of dealing in methamphetamine and possession of methamphetamine. Specifies that, for purposes of the law concerning motor vehicles, a person is intoxicated if the person is under the influence of: (1) model glue or certain other substances; or (2) nitrous oxide. Defines inhaling a toxic vapor, a Class B misdemeanor, as the act of ingesting or inhaling, with intent to cause a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulling of the senses, the fumes of amyl butrate, isobutyl nitrate, freon, chlorinated hydrocarbons, methylene chloride, hexane, ether, chloroform, halothane, or any other chemical having the property of releasing toxic vapors. Makes conforming amendments. **(This conference committee report does the following: (1) Corrects a conflict with SEA 145-2006. (2) Prohibits a person from selling or releasing a retailer's log of ephedrine or pseudoephedrine sales or the records from the completion of a log for a commercial purpose and allows the Indiana**

criminal justice institute to obtain information concerning a log from a law enforcement officer if the information may not be used to identify a specific individual and is used only for statistical purposes. (3) Amends the definition of "model glue" for purposes of the law concerning glue sniffing. (4) Adds certain substances to the list of substances that may be used to commit the crime of inhaling toxic vapors.)

Effective: Upon passage; July 1, 2006.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 193 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 5-2-6-18 IS ADDED TO THE INDIANA CODE AS
- 3 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2006]: **Sec. 18. (a) As used in this section, "institute" means the**
- 5 **Indiana criminal justice institute established by section 3 of this**
- 6 **chapter.**
- 7 **(b) The institute shall adopt:**
- 8 **(1) guidelines; and**
- 9 **(2) a reporting form or a specified electronic format, or both;**
- 10 **for the report of methamphetamine abuse by a law enforcement**
- 11 **agency under IC 5-2-16.**
- 12 **(c) The guidelines adopted under this section must require a law**
- 13 **enforcement agency to report the existence of methamphetamine**
- 14 **abuse to the institute on the form or in the specified electronic**
- 15 **format adopted by the institute.**
- 16 **(d) The guidelines adopted under this section:**
- 17 **(1) may incorporate a recommendation of the**
- 18 **methamphetamine abuse task force (IC 5-2-14) that the**
- 19 **institute determines to be relevant;**
- 20 **(2) may require the institute to report the information**
- 21 **concerning methamphetamine abuse to one (1) or more**

1 **additional agencies or organizations;**
 2 **(3) must require the institute to maintain reports filed under**
 3 **IC 5-2-16 in a manner that permits an accurate assessment of**
 4 **methamphetamine abuse in Indiana; and**
 5 **(4) must require a law enforcement agency to report any other**
 6 **information that the institute determines to be relevant.**

7 SECTION 2. IC 5-2-15-4, AS ADDED BY P.L.192-2005,
 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2006]: Sec. 4. A law enforcement agency that discovers a child
 10 less than ~~fourteen (14)~~ **eighteen (18)** years of age at a
 11 ~~methamphetamine laboratory site used for the illegal manufacture of~~
 12 **a controlled substance (as defined in IC 35-48-1-9)** shall notify the
 13 ~~division of family and children: department of child services.~~

14 SECTION 3. IC 5-2-16 IS ADDED TO THE INDIANA CODE AS
 15 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2006]:

17 **Chapter 16. Methamphetamine Abuse Reporting**

18 **Sec. 1. As used in this chapter, "law enforcement agency" has the**
 19 **meaning set forth in IC 10-11-8-2.**

20 **Sec. 2. As used in this chapter, "methamphetamine abuse" means**
 21 **the:**

- 22 **(1) use;**
- 23 **(2) sale;**
- 24 **(3) manufacture;**
- 25 **(4) transport; or**
- 26 **(5) delivery;**

27 **of methamphetamine or of a methamphetamine precursor, if the**
 28 **precursor is being used, sold, manufactured, transported, or**
 29 **delivered to facilitate the manufacture of methamphetamine.**

30 **Sec. 3. A law enforcement agency that discovers evidence of**
 31 **methamphetamine abuse shall report the methamphetamine abuse**
 32 **to the criminal justice institute on a form and in the manner**
 33 **prescribed by guidelines adopted by the criminal justice institute**
 34 **under IC 5-2-6-18.**

35 SECTION 4. IC 9-13-2-86 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 86. "Intoxicated"
 37 means under the influence of:

- 38 (1) alcohol;
- 39 (2) a controlled substance (as defined in IC 35-48-1);
- 40 (3) a drug other than alcohol or a controlled substance; ~~or~~
- 41 **(4) a substance described in IC 35-46-6-2 or IC 35-46-6-3; or**
- 42 **(5) a combination of alcohol, controlled substances, or drugs**
 43 **substances described in subdivisions (1) through (4);**

44 so that there is an impaired condition of thought and action and the loss
 45 of normal control of a person's faculties.

46 SECTION 5. IC 11-12-3.7-3 IS AMENDED TO READ AS
 47 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. As used in this
 48 chapter, "drug dealing offense" means one (1) or more of the following
 49 offenses:

- 1 (1) Dealing in cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~
 2 (IC 35-48-4-1), unless the person received only minimal
 3 consideration as a result of the drug transaction.
- 4 **(2) Dealing in methamphetamine (IC 35-48-4-1.1), unless the**
 5 **person received only minimal consideration as a result of the**
 6 **drug transaction.**
- 7 **(3) Dealing in a schedule I, II, III, IV, or V controlled substance (IC**
 8 **35-48-4-2 through IC 35-48-4-4), unless the person received only**
 9 **minimal consideration as a result of the drug transaction.**
- 10 ~~(3)~~ **(4) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10),**
 11 **unless the person received only minimal consideration as a result of**
 12 **the drug transaction.**
- 13 SECTION 6. IC 16-31-3-14, AS AMENDED BY P.L.22-2005,
 14 SECTION 21, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) A person holding a
 16 certificate issued under this article must comply with the applicable
 17 standards and rules established under this article. A certificate holder is
 18 subject to disciplinary sanctions under subsection (b) if the ~~state~~
 19 ~~emergency management agency~~ **department of homeland security**
 20 determines that the certificate holder:
- 21 (1) engaged in or knowingly cooperated in fraud or material
 22 deception in order to obtain a certificate, including cheating on a
 23 certification examination;
- 24 (2) engaged in fraud or material deception in the course of
 25 professional services or activities;
- 26 (3) advertised services or goods in a false or misleading manner;
- 27 (4) falsified or knowingly allowed another person to falsify
 28 attendance records or certificates of completion of continuing
 29 education courses required under this article or rules adopted under
 30 this article;
- 31 (5) is convicted of a crime, if the act that resulted in the conviction
 32 has a direct bearing on determining if the certificate holder should
 33 be entrusted to provide emergency medical services;
- 34 (6) is convicted of violating IC 9-19-14.5;
- 35 (7) fails to comply and maintain compliance with or violates any
 36 applicable provision, standard, or other requirement of this article
 37 or rules adopted under this article;
- 38 (8) continues to practice if the certificate holder becomes unfit to
 39 practice due to:
- 40 (A) professional incompetence that includes the undertaking of
 41 professional activities that the certificate holder is not qualified
 42 by training or experience to undertake;
- 43 (B) failure to keep abreast of current professional theory or
 44 practice;
- 45 (C) physical or mental disability; or
- 46 (D) addiction to, abuse of, or dependency on alcohol or other
 47 drugs that endanger the public by impairing the certificate
 48 holder's ability to practice safely;
- 49 (9) engages in a course of lewd or immoral conduct in connection

- 1 with the delivery of services to the public;
- 2 (10) allows the certificate holder's name or a certificate issued
- 3 under this article to be used in connection with a person who
- 4 renders services beyond the scope of that person's training,
- 5 experience, or competence;
- 6 (11) is subjected to disciplinary action in another state or
- 7 jurisdiction on grounds similar to those contained in this chapter.
- 8 For purposes of this subdivision, a certified copy of a record of
- 9 disciplinary action constitutes prima facie evidence of a disciplinary
- 10 action in another jurisdiction;
- 11 (12) assists another person in committing an act that would
- 12 constitute a ground for disciplinary sanction under this chapter; or
- 13 (13) allows a certificate issued by the commission to be:
- 14 (A) used by another person; or
- 15 (B) displayed to the public when the certificate is expired,
- 16 inactive, invalid, revoked, or suspended.
- 17 (b) The ~~state emergency management agency~~ **department of**
- 18 **homeland security** may issue an order under IC 4-21.5-3-6 to impose
- 19 one (1) or more of the following sanctions if the ~~state emergency~~
- 20 ~~management agency~~ **department of homeland security** determines
- 21 that a certificate holder is subject to disciplinary sanctions under
- 22 subsection (a):
- 23 (1) Revocation of a certificate holder's certificate for a period not
- 24 to exceed seven (7) years.
- 25 (2) Suspension of a certificate holder's certificate for a period not
- 26 to exceed seven (7) years.
- 27 (3) Censure of a certificate holder.
- 28 (4) Issuance of a letter of reprimand.
- 29 (5) Assessment of a civil penalty against the certificate holder in
- 30 accordance with the following:
- 31 (A) The civil penalty may not exceed five hundred dollars (\$500)
- 32 per day per violation.
- 33 (B) If the certificate holder fails to pay the civil penalty within the
- 34 time specified by the ~~state emergency management agency;~~
- 35 **department of homeland security**, the ~~state emergency~~
- 36 ~~management agency~~ **department of homeland security** may
- 37 suspend the certificate holder's certificate without additional
- 38 proceedings.
- 39 (6) Placement of a certificate holder on probation status and
- 40 requirement of the certificate holder to:
- 41 (A) report regularly to the ~~state emergency management agency~~
- 42 **department of homeland security** upon the matters that are the
- 43 basis of probation;
- 44 (B) limit practice to those areas prescribed by the ~~state~~
- 45 ~~emergency management agency;~~ **department of homeland**
- 46 **security**;
- 47 (C) continue or renew professional education approved by the
- 48 ~~state emergency management agency~~ **department of homeland**
- 49 **security** until a satisfactory degree of skill has been attained in

1 those areas that are the basis of the probation; or
2 (D) perform or refrain from performing any acts, including
3 community restitution or service without compensation, that the
4 ~~state emergency management agency~~ **department of homeland**
5 **security** considers appropriate to the public interest or to the
6 rehabilitation or treatment of the certificate holder.

7 The ~~state emergency management agency~~ **department of**
8 **homeland security** may withdraw or modify this probation if the
9 ~~state emergency management agency~~ **department of homeland**
10 **security** finds after a hearing that the deficiency that required
11 disciplinary action is remedied or that changed circumstances
12 warrant a modification of the order.

13 (c) If an applicant or a certificate holder has engaged in or knowingly
14 cooperated in fraud or material deception to obtain a certificate,
15 including cheating on the certification examination, the ~~state emergency~~
16 ~~management agency~~ **department of homeland security** may rescind
17 the certificate if it has been granted, void the examination or other
18 fraudulent or deceptive material, and prohibit the applicant from
19 reapplying for the certificate for a length of time established by the ~~state~~
20 ~~emergency management agency.~~ **department of homeland security.**

21 (d) The ~~state emergency management agency~~ **department of**
22 **homeland security** may deny certification to an applicant who would
23 be subject to disciplinary sanctions under subsection (b) if that person
24 were a certificate holder, has had disciplinary action taken against the
25 applicant or the applicant's certificate to practice in another state or
26 jurisdiction, or has practiced without a certificate in violation of the law.
27 A certified copy of the record of disciplinary action is conclusive
28 evidence of the other jurisdiction's disciplinary action.

29 (e) The ~~state emergency management agency~~ **department of**
30 **homeland security** may order a certificate holder to submit to a
31 reasonable physical or mental examination if the certificate holder's
32 physical or mental capacity to practice safely and competently is at
33 issue in a disciplinary proceeding. Failure to comply with a ~~state~~
34 ~~emergency management agency~~ **department of homeland security**
35 order to submit to a physical or mental examination makes a certificate
36 holder liable to temporary suspension under subsection (i).

37 (f) Except as provided under subsection (a), subsection (g), and
38 section 14.5 of this chapter, a certificate may not be denied, revoked, or
39 suspended because the applicant or certificate holder has been convicted
40 of an offense. The acts from which the applicant's or certificate holder's
41 conviction resulted may be considered as to whether the applicant or
42 certificate holder should be entrusted to serve the public in a specific
43 capacity.

44 (g) The ~~state emergency management agency~~ **department of**
45 **homeland security** may deny, suspend, or revoke a certificate issued
46 under this article if the individual who holds or is applying for the
47 certificate is convicted of any of the following:

48 (1) Possession of cocaine ~~or~~ a narcotic drug ~~or~~ methamphetamine
49 under IC 35-48-4-6.

- 1 (2) **Possession of methamphetamine under IC 35-48-4-6.1.**
 2 (3) Possession of a controlled substance under IC 35-48-4-7(a).
 3 ~~(3)~~ (4) Fraudulently obtaining a controlled substance under
 4 IC 35-48-4-7(b).
 5 ~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under
 6 IC 35-48-4-8.1(b).
 7 ~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under
 8 IC 35-48-4-8.5(b).
 9 ~~(6)~~ (7) Possession of paraphernalia as a Class D felony under
 10 IC 35-48-4-8.3(b).
 11 ~~(7)~~ (8) Possession of marijuana, hash oil, or hashish as a Class D
 12 felony under IC 35-48-4-11.
 13 ~~(8)~~ (9) Maintaining a common nuisance under IC 35-48-4-13.
 14 ~~(9)~~ (10) An offense relating to registration, labeling, and
 15 prescription forms under IC 35-48-4-14.
 16 ~~(10)~~ (11) Conspiracy under IC 35-41-5-2 to commit an offense
 17 listed in subdivisions (1) through ~~(9)~~: (10).
 18 ~~(11)~~ (12) Attempt under IC 35-41-5-1 to commit an offense listed
 19 in subdivisions (1) through (10).
 20 ~~(12)~~ (13) An offense in any other jurisdiction in which the elements
 21 of the offense for which the conviction was entered are substantially
 22 similar to the elements of an offense described by subdivisions (1)
 23 through ~~(11)~~ (12).
 24 (h) A decision of the ~~state emergency management agency~~
 25 **department of homeland security** under subsections (b) through (g)
 26 may be appealed to the commission under IC 4-21.5-3-7.
 27 (i) The ~~state emergency management agency~~ **department of**
 28 **homeland security** may temporarily suspend a certificate holder's
 29 certificate under IC 4-21.5-4 before a final adjudication or during the
 30 appeals process if the ~~state emergency management agency~~ **department**
 31 **of homeland security** finds that a certificate holder would represent a
 32 clear and immediate danger to the public's health, safety, or property if
 33 the certificate holder were allowed to continue to practice.
 34 (j) On receipt of a complaint or information alleging that a person
 35 certified under this chapter or IC 16-31-3.5 has engaged in or is
 36 engaging in a practice that is subject to disciplinary sanctions under this
 37 chapter, the ~~state emergency management agency~~ **department of**
 38 **homeland security** must initiate an investigation against the person.
 39 (k) The ~~state emergency management agency~~ **department of**
 40 **homeland security** shall conduct a factfinding investigation as the ~~state~~
 41 ~~emergency management agency~~ **department of homeland security**
 42 considers proper in relation to the complaint.
 43 (l) The ~~state emergency management agency~~ **department of**
 44 **homeland security** may reinstate a certificate that has been suspended
 45 under this section if the ~~state emergency management agency~~
 46 **department of homeland security** is satisfied that the applicant is able
 47 to practice with reasonable skill, competency, and safety to the public.
 48 As a condition of reinstatement, the ~~state emergency management~~
 49 ~~agency~~ **department of homeland security** may impose disciplinary or

1 corrective measures authorized under this chapter.

2 (m) The ~~state emergency management agency~~ **department of**
3 **homeland security** may not reinstate a certificate that has been revoked
4 under this chapter.

5 (n) The ~~state emergency management agency~~ **department of**
6 **homeland security** must be consistent in the application of sanctions
7 authorized in this chapter. Significant departures from prior decisions
8 involving similar conduct must be explained in the ~~state emergency~~
9 ~~management agency's~~ **department of homeland security's** findings or
10 orders.

11 (o) A certificate holder may not surrender the certificate holder's
12 certificate without the written approval of the ~~state emergency~~
13 ~~management agency,~~ **department of homeland security,** and the ~~state~~
14 ~~emergency management agency~~ **department of homeland security**
15 may impose any conditions appropriate to the surrender or
16 reinstatement of a surrendered certificate.

17 (p) For purposes of this section, "certificate holder" means a person
18 who holds:

- 19 (1) an unlimited certificate;
- 20 (2) a limited or probationary certificate; or
- 21 (3) an inactive certificate.

22 SECTION 7. IC 16-31-3-14.5 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 14.5. The ~~state~~
24 ~~emergency management agency~~ **department of homeland security**
25 may issue an order under IC 4-21.5-3-6 to deny an applicant's request
26 for certification or permanently revoke a certificate under procedures
27 provided by section 14 of this chapter if the individual who holds the
28 certificate issued under this title is convicted of any of the following:

- 29 (1) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
30 ~~methamphetamine~~ under IC 35-48-4-1.
- 31 (2) **Dealing in methamphetamine under IC 35-48-4-1.1.**
- 32 (3) Dealing in a schedule I, II, or III controlled substance under
33 IC 35-48-4-2.
- 34 ~~(3)~~ (4) Dealing in a schedule IV controlled substance under
35 IC 35-48-4-3.
- 36 ~~(4)~~ (5) Dealing in a schedule V controlled substance under
37 IC 35-48-4-4.
- 38 ~~(5)~~ (6) Dealing in a substance represented to be a controlled
39 substance under IC 35-48-4-4.5.
- 40 ~~(6)~~ (7) Knowingly or intentionally manufacturing, advertising,
41 distributing, or possessing with intent to manufacture, advertise, or
42 distribute a substance represented to be a controlled substance
43 under IC 35-48-4-4.6.
- 44 ~~(7)~~ (8) Dealing in a counterfeit substance under IC 35-48-4-5.
- 45 ~~(8)~~ (9) Dealing in marijuana, hash oil, or hashish under
46 IC 35-48-4-10(b).
- 47 ~~(9)~~(10) Conspiracy under IC 35-41-5-2 to commit an offense listed
48 in subdivisions (1) through ~~(8)~~: (9).
- 49 ~~(10)~~ (11) Attempt under IC 35-41-5-1 to commit an offense listed

- 1 in subdivisions (1) through ~~(8)~~ **(9)**.
- 2 ~~(11)~~ **(12)** A crime of violence (as defined in IC 35-50-1-2(a)).
- 3 ~~(12)~~ **(13)** An offense in any other jurisdiction in which the elements
- 4 of the offense for which the conviction was entered are substantially
- 5 similar to the elements of an offense described under subdivisions
- 6 (1) through ~~(11)~~ **(12)**.
- 7 SECTION 8. IC 20-28-5-8, AS ADDED BY P.L.246-2005,
- 8 SECTION 159, IS AMENDED TO READ AS FOLLOWS
- 9 [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) This section applies when
- 10 a prosecuting attorney knows that a licensed employee of a public
- 11 school or a nonpublic school has been convicted of an offense listed in
- 12 subsection (c). The prosecuting attorney shall immediately give written
- 13 notice of the conviction to the following:
- 14 (1) The state superintendent.
- 15 (2) Except as provided in subdivision (3), the superintendent of the
- 16 school corporation that employs the licensed employee or the
- 17 equivalent authority if a nonpublic school employs the licensed
- 18 employee.
- 19 (3) The presiding officer of the governing body of the school
- 20 corporation that employs the licensed employee, if the convicted
- 21 licensed employee is the superintendent of the school corporation.
- 22 (b) The superintendent of a school corporation, presiding officer of
- 23 the governing body, or equivalent authority for a nonpublic school shall
- 24 immediately notify the state superintendent when the individual knows
- 25 that a current or former licensed employee of the public school or
- 26 nonpublic school has been convicted of an offense listed in subsection
- 27 (c).
- 28 (c) The department, after holding a hearing on the matter, shall
- 29 permanently revoke the license of a person who is known by the
- 30 department to have been convicted of any of the following felonies:
- 31 (1) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen
- 32 (18) years of age.
- 33 (2) Criminal confinement (IC 35-42-3-3), if the victim is less than
- 34 eighteen (18) years of age.
- 35 (3) Rape (IC 35-42-4-1), if the victim is less than eighteen (18)
- 36 years of age.
- 37 (4) Criminal deviate conduct (IC 35-42-4-2), if the victim is less
- 38 than eighteen (18) years of age.
- 39 (5) Child molesting (IC 35-42-4-3).
- 40 (6) Child exploitation (IC 35-42-4-4(b)).
- 41 (7) Vicarious sexual gratification (IC 35-42-4-5).
- 42 (8) Child solicitation (IC 35-42-4-6).
- 43 (9) Child seduction (IC 35-42-4-7).
- 44 (10) Sexual misconduct with a minor (IC 35-42-4-9).
- 45 (11) Incest (IC 35-46-1-3), if the victim is less than eighteen (18)
- 46 years of age.
- 47 (12) Dealing in or manufacturing cocaine **or** a narcotic drug **or**
- 48 **methamphetamine** (IC 35-48-4-1).
- 49 (13) **Dealing in methamphetamine (IC 35-48-4-1.1).**

- 1 **(14)** Dealing in a schedule I, II, or III controlled substance
 2 (IC 35-48-4-2).
 3 ~~(14)~~ **(15)** Dealing in a schedule IV controlled substance
 4 (IC 35-48-4-3).
 5 ~~(15)~~ **(16)** Dealing in a schedule V controlled substance
 6 (IC 35-48-4-4).
 7 ~~(16)~~ **(17)** Dealing in a counterfeit substance (IC 35-48-4-5).
 8 ~~(17)~~ **(18)** Dealing in marijuana, hash oil, or hashish
 9 (IC 35-48-4-10(b)).

10 (d) A license may be suspended by the state superintendent as
 11 specified in IC 20-28-7-7.

12 SECTION 9. IC 22-15-5-16 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16. (a) A practitioner
 14 shall comply with the standards established under this licensing
 15 program. A practitioner is subject to the exercise of the disciplinary
 16 sanctions under subsection (b) if the department finds that a practitioner
 17 has:

- 18 (1) engaged in or knowingly cooperated in fraud or material
 19 deception in order to obtain a license to practice, including cheating
 20 on a licensing examination;
 21 (2) engaged in fraud or material deception in the course of
 22 professional services or activities;
 23 (3) advertised services or goods in a false or misleading manner;
 24 (4) falsified or knowingly allowed another person to falsify
 25 attendance records or certificates of completion of continuing
 26 education courses provided under this chapter;
 27 (5) been convicted of a crime that has a direct bearing on the
 28 practitioner's ability to continue to practice competently;
 29 (6) knowingly violated a state statute or rule or federal statute or
 30 regulation regulating the profession for which the practitioner is
 31 licensed;
 32 (7) continued to practice although the practitioner has become unfit
 33 to practice due to:
 34 (A) professional incompetence;
 35 (B) failure to keep abreast of current professional theory or
 36 practice;
 37 (C) physical or mental disability; or
 38 (D) addiction to, abuse of, or severe dependency on alcohol or
 39 other drugs that endanger the public by impairing a practitioner's
 40 ability to practice safely;
 41 (8) engaged in a course of lewd or immoral conduct in connection
 42 with the delivery of services to the public;
 43 (9) allowed the practitioner's name or a license issued under this
 44 chapter to be used in connection with an individual or business who
 45 renders services beyond the scope of that individual's or business's
 46 training, experience, or competence;
 47 (10) had disciplinary action taken against the practitioner or the
 48 practitioner's license to practice in another state or jurisdiction on
 49 grounds similar to those under this chapter;

1 (11) assisted another person in committing an act that would
2 constitute a ground for disciplinary sanction under this chapter; or

3 (12) allowed a license issued by the department to be:

4 (A) used by another person; or

5 (B) displayed to the public when the license has expired, is
6 inactive, is invalid, or has been revoked or suspended.

7 For purposes of subdivision (10), a certified copy of a record of
8 disciplinary action constitutes prima facie evidence of a disciplinary
9 action in another jurisdiction.

10 (b) The department may impose one (1) or more of the following
11 sanctions if the department finds that a practitioner is subject to
12 disciplinary sanctions under subsection (a):

13 (1) Permanent revocation of a practitioner's license.

14 (2) Suspension of a practitioner's license.

15 (3) Censure of a practitioner.

16 (4) Issuance of a letter of reprimand.

17 (5) Assess a civil penalty against the practitioner in accordance
18 with the following:

19 (A) The civil penalty may not be more than one thousand dollars
20 (\$1,000) for each violation listed in subsection (a), except for a
21 finding of incompetency due to a physical or mental disability.

22 (B) When imposing a civil penalty, the department shall consider
23 a practitioner's ability to pay the amount assessed. If the
24 practitioner fails to pay the civil penalty within the time specified
25 by the department, the department may suspend the practitioner's
26 license without additional proceedings. However, a suspension
27 may not be imposed if the sole basis for the suspension is the
28 practitioner's inability to pay a civil penalty.

29 (6) Place a practitioner on probation status and require the
30 practitioner to:

31 (A) report regularly to the department upon the matters that are
32 the basis of probation;

33 (B) limit practice to those areas prescribed by the department;

34 (C) continue or renew professional education approved by the
35 department until a satisfactory degree of skill has been attained
36 in those areas that are the basis of the probation; or

37 (D) perform or refrain from performing any acts, including
38 community restitution or service without compensation, that the
39 department considers appropriate to the public interest or to the
40 rehabilitation or treatment of the practitioner.

41 The department may withdraw or modify this probation if the
42 department finds after a hearing that the deficiency that required
43 disciplinary action has been remedied or that changed
44 circumstances warrant a modification of the order.

45 (c) If an applicant or a practitioner has engaged in or knowingly
46 cooperated in fraud or material deception to obtain a license to practice,
47 including cheating on the licensing examination, the department may
48 rescind the license if it has been granted, void the examination or other
49 fraudulent or deceptive material, and prohibit the applicant from

1 reapplying for the license for a length of time established by the
2 department.

3 (d) The department may deny licensure to an applicant who has had
4 disciplinary action taken against the applicant or the applicant's license
5 to practice in another state or jurisdiction or who has practiced without
6 a license in violation of the law. A certified copy of the record of
7 disciplinary action is conclusive evidence of the other jurisdiction's
8 disciplinary action.

9 (e) The department may order a practitioner to submit to a reasonable
10 physical or mental examination if the practitioner's physical or mental
11 capacity to practice safely and competently is at issue in a disciplinary
12 proceeding. Failure to comply with a department order to submit to a
13 physical or mental examination makes a practitioner liable to temporary
14 suspension under subsection (j).

15 (f) Except as provided under subsection (g) or (h), a license may not
16 be denied, revoked, or suspended because the applicant or holder has
17 been convicted of an offense. The acts from which the applicant's or
18 holder's conviction resulted may, however, be considered as to whether
19 the applicant or holder should be entrusted to serve the public in a
20 specific capacity.

21 (g) The department may deny, suspend, or revoke a license issued
22 under this chapter if the individual who holds the license is convicted of
23 any of the following:

24 (1) Possession of cocaine ~~or~~ a narcotic drug ~~or~~ ~~methamphetamine~~
25 under IC 35-48-4-6.

26 (2) **Possession of methamphetamine under IC 35-48-4-6.1.**

27 (3) Possession of a controlled substance under IC 35-48-4-7(a).

28 ~~(3)~~ (4) Fraudulently obtaining a controlled substance under
29 IC 35-48-4-7(b).

30 ~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under
31 IC 35-48-4-8.1(b).

32 ~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under
33 IC 35-48-4-8.5(b).

34 ~~(6)~~ (7) Possession of paraphernalia as a Class D felony under
35 IC 35-48-4-8.3(b).

36 ~~(7)~~ (8) Possession of marijuana, hash oil, or hashish as a Class D
37 felony under IC 35-48-4-11.

38 ~~(8)~~ (9) Maintaining a common nuisance under IC 35-48-4-13.

39 ~~(9)~~ (10) An offense relating to registration, labeling, and
40 prescription forms under IC 35-48-4-14.

41 ~~(10)~~ (11) Conspiracy under IC 35-41-5-2 to commit an offense
42 listed in clauses (1) through ~~(9)~~: (10).

43 ~~(11)~~ (12) Attempt under IC 35-41-5-1 to commit an offense listed
44 in clauses (1) through (10).

45 ~~(12)~~ (13) An offense in any other jurisdiction in which the elements
46 of the offense for which the conviction was entered are substantially
47 similar to the elements of an offense described under clauses (1)
48 through ~~(11)~~: (12).

49 (h) The department shall deny, revoke, or suspend a license issued

1 under this chapter if the individual who holds the license is convicted of
2 any of the following:

3 (1) Dealing in cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~
4 under IC 35-48-4-1.

5 **(2) Dealing in methamphetamine under IC 35-48-4-1.1.**

6 **(3)** Dealing in a schedule I, II, or III controlled substance under
7 IC 35-48-4-2.

8 ~~(3)~~ **(4)** Dealing in a schedule IV controlled substance under
9 IC 35-48-4-3.

10 ~~(4)~~ **(5)** Dealing in a schedule V controlled substance under
11 IC 35-48-4-4.

12 ~~(5)~~ **(6)** Dealing in a substance represented to be a controlled
13 substance under IC 35-48-4-4.5.

14 ~~(6)~~ **(7)** Knowingly or intentionally manufacturing, advertising,
15 distributing, or possessing with intent to manufacture, advertise, or
16 distribute a substance represented to be a controlled substance
17 under IC 35-48-4-4.6.

18 ~~(7)~~ **(8)** Dealing in a counterfeit substance under IC 35-48-4-5.

19 ~~(8)~~ **(9)** Dealing in marijuana, hash oil, or hashish under
20 IC 35-48-4-10(b).

21 ~~(9)~~ **(10)** Conspiracy under IC 35-41-5-2 to commit an offense listed
22 in clauses (1) through ~~(8)~~: **(9)**.

23 ~~(10)~~ **(11)** Attempt under IC 35-41-5-1 to commit an offense listed
24 in clauses (1) through (9).

25 ~~(11)~~ **(12)** An offense in any other jurisdiction in which the elements
26 of the offense for which the conviction was entered are substantially
27 similar to the elements of an offense described under clauses (1)
28 through ~~(10)~~: **(11)**.

29 ~~(12)~~ **(13)** A violation of any federal or state drug law or rule related
30 to wholesale legend drug distributors licensed under IC 25-26-14.

31 (i) A decision of the department under subsections (b) through (h)
32 may be appealed to the commission under IC 4-21.5-3-7.

33 (j) The department may temporarily suspend a practitioner's license
34 under IC 4-21.5-4 before a final adjudication or during the appeals
35 process if the department finds that a practitioner represents a clear and
36 immediate danger to the public's health, safety, or property if the
37 practitioner is allowed to continue to practice.

38 (k) On receipt of a complaint or an information alleging that a person
39 licensed under this chapter has engaged in or is engaging in a practice
40 that jeopardizes the public health, safety, or welfare, the department
41 shall initiate an investigation against the person.

42 (l) Any complaint filed with the office of the attorney general alleging
43 a violation of this licensing program shall be referred to the department
44 for summary review and for its general information and any authorized
45 action at the time of the filing.

46 (m) The department shall conduct a fact finding investigation as the
47 department considers proper in relation to the complaint.

48 (n) The department may reinstate a license that has been suspended
49 under this section if, after a hearing, the department is satisfied that the

1 applicant is able to practice with reasonable skill, safety, and
 2 competency to the public. As a condition of reinstatement, the
 3 department may impose disciplinary or corrective measures authorized
 4 under this chapter.

5 (o) The department may not reinstate a license that has been revoked
 6 under this chapter. An individual whose license has been revoked under
 7 this chapter may not apply for a new license until seven (7) years after
 8 the date of revocation.

9 (p) The department shall seek to achieve consistency in the
 10 application of sanctions authorized in this chapter. Significant
 11 departures from prior decisions involving similar conduct must be
 12 explained in the department's findings or orders.

13 (q) A practitioner may petition the department to accept the surrender
 14 of the practitioner's license instead of having a hearing before the
 15 commission. The practitioner may not surrender the practitioner's
 16 license without the written approval of the department, and the
 17 department may impose any conditions appropriate to the surrender or
 18 reinstatement of a surrendered license.

19 (r) A practitioner who has been subjected to disciplinary sanctions
 20 may be required by the commission to pay the costs of the proceeding.
 21 The practitioner's ability to pay shall be considered when costs are
 22 assessed. If the practitioner fails to pay the costs, a suspension may not
 23 be imposed solely upon the practitioner's inability to pay the amount
 24 assessed. The costs are limited to costs for the following:

- 25 (1) Court reporters.
- 26 (2) Transcripts.
- 27 (3) Certification of documents.
- 28 (4) Photo duplication.
- 29 (5) Witness attendance and mileage fees.
- 30 (6) Postage.
- 31 (7) Expert witnesses.
- 32 (8) Depositions.
- 33 (9) Notarizations.

34 SECTION 10. IC 25-1-1.1-2 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A board, a
 36 commission, or a committee may suspend or revoke a license or
 37 certificate issued under this title by the board, the commission, or the
 38 committee if the individual who holds the license or certificate is
 39 convicted of any of the following:

- 40 (1) Possession of cocaine ~~or~~ a narcotic drug ~~or methamphetamine~~
 41 under IC 35-48-4-6.
- 42 (2) **Possession of methamphetamine under IC 35-48-4-6.1.**
- 43 (3) Possession of a controlled substance under IC 35-48-4-7(a).
- 44 ~~(3)~~ (4) Fraudulently obtaining a controlled substance under
 45 IC 35-48-4-7(b).
- 46 ~~(4)~~ (5) Manufacture of paraphernalia as a Class D felony under
 47 IC 35-48-4-8.1(b).
- 48 ~~(5)~~ (6) Dealing in paraphernalia as a Class D felony under
 49 IC 35-48-4-8.5(b).

- 1 ~~(6)~~ **(7)** Possession of paraphernalia as a Class D felony under
2 IC 35-48-4-8.3(b).
- 3 ~~(7)~~ **(8)** Possession of marijuana, hash oil, or hashish as a Class D
4 felony under IC 35-48-4-11.
- 5 ~~(8)~~ **(9)** Maintaining a common nuisance under IC 35-48-4-13.
- 6 ~~(9)~~ **(10)** An offense relating to registration, labeling, and
7 prescription forms under IC 35-48-4-14.
- 8 ~~(10)~~ **(11)** Conspiracy under IC 35-41-5-2 to commit an offense
9 listed in subdivisions (1) through ~~(9)~~: **(10)**.
- 10 ~~(11)~~ **(12)** Attempt under IC 35-41-5-1 to commit an offense listed
11 in subdivisions (1) through ~~(9)~~: **(10)**.
- 12 ~~(12)~~ **(13)** An offense in any other jurisdiction in which the elements
13 of the offense for which the conviction was entered are substantially
14 similar to the elements of an offense described under subdivisions
15 (1) through ~~(11)~~: **(12)**.
- 16 SECTION 11. IC 25-1-1.1-3 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. A board, a
18 commission, or a committee shall revoke or suspend a license or
19 certificate issued under this title by the board, the commission, or the
20 committee if the individual who holds the license or certificate is
21 convicted of any of the following:
- 22 (1) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
23 ~~methamphetamine~~ under IC 35-48-4-1.
- 24 (2) **Dealing in methamphetamine under IC 35-48-4-1.1.**
- 25 (3) Dealing in a schedule I, II, or III controlled substance under
26 IC 35-48-4-2.
- 27 ~~(3)~~ **(4)** Dealing in a schedule IV controlled substance under
28 IC 35-48-4-3.
- 29 ~~(4)~~ **(5)** Dealing in a schedule V controlled substance under
30 IC 35-48-4-4.
- 31 ~~(5)~~ **(6)** Dealing in a substance represented to be a controlled
32 substance under IC 35-48-4-4.5.
- 33 ~~(6)~~ **(7)** Knowingly or intentionally manufacturing, advertising,
34 distributing, or possessing with intent to manufacture, advertise, or
35 distribute a substance represented to be a controlled substance
36 under IC 35-48-4-4.6.
- 37 ~~(7)~~ **(8)** Dealing in a counterfeit substance under IC 35-48-4-5.
- 38 ~~(8)~~ **(9)** Dealing in marijuana, hash oil, or hashish under
39 IC 35-48-4-10(b).
- 40 ~~(9)~~ **(10)** Conspiracy under IC 35-41-5-2 to commit an offense listed
41 in subdivisions (1) through ~~(8)~~: **(9)**.
- 42 ~~(10)~~ **(11)** Attempt under IC 35-41-5-1 to commit an offense listed
43 in subdivisions (1) through ~~(8)~~: **(9)**.
- 44 ~~(11)~~ **(12)** An offense in any other jurisdiction in which the elements
45 of the offense for which the conviction was entered are substantially
46 similar to the elements of an offense described under subdivisions
47 (1) through ~~(10)~~: **(11)**.
- 48 ~~(12)~~ **(13)** A violation of any federal or state drug law or rule related
49 to wholesale legend drug distributors licensed under IC 25-26-14.

1 SECTION 12. IC 31-30-1-4 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) The juvenile
 3 court does not have jurisdiction over an individual for an alleged
 4 violation of:

- 5 (1) IC 35-42-1-1 (murder);
- 6 (2) IC 35-42-3-2 (kidnapping);
- 7 (3) IC 35-42-4-1 (rape);
- 8 (4) IC 35-42-4-2 (criminal deviate conduct);
- 9 (5) IC 35-42-5-1 (robbery) if:
 - 10 (A) the robbery was committed while armed with a deadly
 - 11 weapon; or
 - 12 (B) the robbery results in bodily injury or serious bodily injury;
- 13 (6) IC 35-42-5-2 (carjacking);
- 14 (7) IC 35-45-9-3 (criminal gang activity);
- 15 (8) IC 35-45-9-4 (criminal gang intimidation);
- 16 (9) IC 35-47-2-1 (carrying a handgun without a license);
- 17 (10) IC 35-47-10 (children and firearms);
- 18 (11) IC 35-47-5-4.1 (dealing in a sawed-off shotgun); or
- 19 (12) any offense that may be joined under IC 35-34-1-9(a)(2) with
- 20 any crime listed in subdivisions (1) through (11);

21 if the individual was at least sixteen (16) years of age at the time of the
 22 alleged violation.

23 (b) The juvenile court does not have jurisdiction for an alleged
 24 violation of manufacturing or dealing in cocaine ~~or~~ a narcotic drug ~~or~~
 25 ~~methamphetamine~~ (IC 35-48-4-1), **dealing in methamphetamine**
 26 **(IC 35-48-4-1.1)**, dealing in a schedule I, II, or III controlled substance
 27 (IC 35-48-4-2), or dealing in a schedule IV controlled substance
 28 (IC 35-48-4-3), if:

- 29 (1) the individual has a prior unrelated conviction under
- 30 IC 35-48-4-1, **IC 35-48-4-1.1**, IC 35-48-4-2, or IC 35-48-4-3; or
- 31 (2) the individual has a prior unrelated juvenile adjudication that,
- 32 if committed by an adult, would be a crime under IC 35-48-4-1,
- 33 **IC 35-48-4-1.1**, IC 35-48-4-2, or IC 35-48-4-3;

34 and the individual was at least sixteen (16) years of age at the time of
 35 the alleged violation.

36 (c) Once an individual described in subsection (a) ~~or (b)~~ has been
 37 charged with any crime listed in subsection ~~(a)(1) through (a)(15)~~ **(a)**
 38 **or (b)**, the court having adult criminal jurisdiction shall retain
 39 jurisdiction over the case even if the individual pleads guilty to or is
 40 convicted of a lesser included offense. A plea of guilty to or a conviction
 41 of a lesser included offense does not vest jurisdiction in the juvenile
 42 court.

43 SECTION 13. IC 34-24-1-1, AS AMENDED BY SEA 145-2006,
 44 SECTION 11, IS AMENDED TO READ AS FOLLOWS
 45 [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) The following may be seized:

- 46 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
- 47 intended for use by the person or persons in possession of them to
- 48 transport or in any manner to facilitate the transportation of the
- 49 following:

- 1 (A) A controlled substance for the purpose of committing,
 2 attempting to commit, or conspiring to commit any of the
 3 following:
- 4 (i) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
 5 ~~methamphetamine~~ (IC 35-48-4-1).
- 6 (ii) **Dealing in methamphetamine (IC 35-48-4-1.1).**
- 7 (iii) Dealing in a schedule I, II, or III controlled substance
 8 (IC 35-48-4-2).
- 9 ~~(iii)~~ (iv) Dealing in a schedule IV controlled substance
 10 (IC 35-48-4-3).
- 11 ~~(iv)~~ (v) Dealing in a schedule V controlled substance
 12 (IC 35-48-4-4).
- 13 ~~(v)~~ (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
- 14 ~~(vi)~~ (vii) Possession of cocaine ~~or~~ a narcotic drug ~~or~~
 15 ~~methamphetamine~~ (IC 35-48-4-6).
- 16 (viii) **Possession of methamphetamine (IC 35-48-4-6.1).**
- 17 ~~(vii)~~ (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
- 18 ~~(viii)~~ (x) Dealing in marijuana, hash oil, or hashish
 19 (IC 35-48-4-10).
- 20 (B) Any stolen (IC 35-43-4-2) or converted property
 21 (IC 35-43-4-3) if the retail or repurchase value of that property
 22 is one hundred dollars (\$100) or more.
- 23 (C) Any hazardous waste in violation of IC 13-30-6-6.
- 24 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 25 destruction (as defined in IC 35-41-1-29.4) used to commit, used
 26 in an attempt to commit, or used in a conspiracy to commit an
 27 offense under IC 35-47 as part of or in furtherance of an act of
 28 terrorism (as defined by IC 35-41-1-26.5).
- 29 (2) All money, negotiable instruments, securities, weapons,
 30 communications devices, or any property used to commit, used in
 31 an attempt to commit, or used in a conspiracy to commit an offense
 32 under IC 35-47 as part of or in furtherance of an act of terrorism or
 33 commonly used as consideration for a violation of IC 35-48-4
 34 (other than items subject to forfeiture under IC 16-42-20-5 or
 35 IC 16-6-8.5-5.1 before its repeal):
- 36 (A) furnished or intended to be furnished by any person in
 37 exchange for an act that is in violation of a criminal statute;
- 38 (B) used to facilitate any violation of a criminal statute; or
- 39 (C) traceable as proceeds of the violation of a criminal statute.
- 40 (3) Any portion of real or personal property purchased with money
 41 that is traceable as a proceed of a violation of a criminal statute.
- 42 (4) A vehicle that is used by a person to:
- 43 (A) commit, attempt to commit, or conspire to commit;
- 44 (B) facilitate the commission of; or
- 45 (C) escape from the commission of;
- 46 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 47 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 48 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 49 under IC 35-47 as part of or in furtherance of an act of terrorism.

- 1 (5) Real property owned by a person who uses it to commit any of
 2 the following as a Class A felony, a Class B felony, or a Class C
 3 felony:
- 4 (A) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
 5 ~~methamphetamine~~ (IC 35-48-4-1).
- 6 **(B) Dealing in methamphetamine (IC 35-48-4-1.1).**
- 7 **(C)** Dealing in a schedule I, II, or III controlled substance
 8 (IC 35-48-4-2).
- 9 ~~(C)~~ **(D)** Dealing in a schedule IV controlled substance
 10 (IC 35-48-4-3).
- 11 ~~(D)~~ **(E)** Dealing in marijuana, hash oil, or hashish
 12 (IC 35-48-4-10).
- 13 (6) Equipment and recordings used by a person to commit fraud
 14 under IC 35-43-5-4(10).
- 15 (7) Recordings sold, rented, transported, or possessed by a person
 16 in violation of IC 24-4-10.
- 17 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 18 defined by IC 35-45-6-1) that is the object of a corrupt business
 19 influence violation (IC 35-45-6-2).
- 20 (9) Unlawful telecommunications devices (as defined in
 21 IC 35-45-13-6) and plans, instructions, or publications used to
 22 commit an offense under IC 35-45-13.
- 23 (10) Any equipment used or intended for use in preparing,
 24 photographing, recording, videotaping, digitizing, printing,
 25 copying, or disseminating matter in violation of IC 35-42-4-4.
- 26 (11) Destructive devices used, possessed, transported, or sold in
 27 violation of IC 35-47.5.
- 28 (12) Tobacco products that are sold in violation of IC 24-3-5,
 29 tobacco products that a person attempts to sell in violation of
 30 IC 24-3-5, and other personal property owned and used by a person
 31 to facilitate a violation of IC 24-3-5.
- 32 (13) Property used by a person to commit counterfeiting or forgery
 33 in violation of IC 35-43-5-2.
- 34 (14) After December 31, 2005, if a person is convicted of an
 35 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
 36 following real or personal property:
- 37 (A) Property used or intended to be used to commit, facilitate, or
 38 promote the commission of the offense.
- 39 (B) Property constituting, derived from, or traceable to the gross
 40 proceeds that the person obtained directly or indirectly as a result
 41 of the offense.
- 42 (15) Except as provided in subsection (e), a motor vehicle used by
 43 a person who operates the motor vehicle:
- 44 (A) while intoxicated, in violation of IC 9-30-5-1 through
 45 IC 9-30-5-5, if in the previous five (5) years the person has two
 46 (2) or more prior unrelated convictions:
- 47 (i) for operating a motor vehicle while intoxicated in violation
 48 of IC 9-30-5-1 through IC 9-30-5-5; or
 49 (ii) for an offense that is substantially similar to IC 9-30-5-1

1 through IC 9-30-5-5 in another jurisdiction; or
 2 (B) on a highway while the person's driver's license is suspended
 3 in violation of IC 9-24-19-2 through IC 9-24-19-4, if in the
 4 previous five (5) years the person has two (2) or more prior
 5 unrelated convictions:

- 6 (i) for operating a motor vehicle while intoxicated in violation
 7 of IC 9-30-5-1 through IC 9-30-5-5; or
 8 (ii) for an offense that is substantially similar to IC 9-30-5-1
 9 through IC 9-30-5-5 in another jurisdiction.

10 If a court orders the seizure of a motor vehicle under this
 11 subdivision, the court shall transmit an order to the bureau of motor
 12 vehicles recommending that the bureau not permit a motor vehicle
 13 to be registered in the name of the person whose motor vehicle was
 14 seized until the person possesses a current driving license (as
 15 defined in IC 9-13-2-41).

16 (b) A vehicle used by any person as a common or contract carrier in
 17 the transaction of business as a common or contract carrier is not
 18 subject to seizure under this section, unless it can be proven by a
 19 preponderance of the evidence that the owner of the vehicle knowingly
 20 permitted the vehicle to be used to engage in conduct that subjects it to
 21 seizure under subsection (a).

22 (c) Equipment under subsection (a)(10) may not be seized unless it
 23 can be proven by a preponderance of the evidence that the owner of the
 24 equipment knowingly permitted the equipment to be used to engage in
 25 conduct that subjects it to seizure under subsection (a)(10).

26 (d) Money, negotiable instruments, securities, weapons,
 27 communications devices, or any property commonly used as
 28 consideration for a violation of IC 35-48-4 found near or on a person
 29 who is committing, attempting to commit, or conspiring to commit any
 30 of the following offenses shall be admitted into evidence in an action
 31 under this chapter as prima facie evidence that the money, negotiable
 32 instrument, security, or other thing of value is property that has been
 33 used or was to have been used to facilitate the violation of a criminal
 34 statute or is the proceeds of the violation of a criminal statute:

35 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine ~~or~~ a narcotic
 36 drug). ~~or methamphetamine).~~

37 **(2) IC 35-48-4-1.1 (dealing in methamphetamine).**

38 **(3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 39 substance).**

40 ~~(3)~~ **(4) IC 35-48-4-3 (dealing in a schedule IV controlled
 41 substance).**

42 ~~(4)~~ **(5) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 43 as a Class B felony.**

44 ~~(5)~~ **(6) IC 35-48-4-6 (possession of cocaine ~~or~~ a narcotic drug) ~~or~~
 45 ~~methamphetamine~~) as a Class A felony, Class B felony, or Class C
 46 felony.**

47 **(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class
 48 A felony, Class B felony, or Class C felony.**

49 ~~(6)~~ **(8) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish)**

1 as a Class C felony.

2 (e) A motor vehicle operated by a person who is not:

3 (1) an owner of the motor vehicle; or

4 (2) the spouse of the person who owns the motor vehicle;

5 is not subject to seizure under subsection (a)(15) unless it can be proven
6 by a preponderance of the evidence that the owner of the vehicle
7 knowingly permitted the vehicle to be used to engage in conduct that
8 subjects it to seizure under subsection (a)(15).

9 SECTION 14. IC 35-33-5-5, AS AMENDED BY P.L.187-2005,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2006]: Sec. 5. (a) All items of property seized by any law
12 enforcement agency as a result of an arrest, search warrant, or
13 warrantless search, shall be securely held by the law enforcement
14 agency under the order of the court trying the cause, except as provided
15 in this section.

16 (b) Evidence that consists of property obtained unlawfully from its
17 owner may be returned by the law enforcement agency to the owner
18 before trial, in accordance with IC 35-43-4-4(h).

19 (c) Following the final disposition of the cause at trial level or any
20 other final disposition the following shall be done:

21 (1) Property which may be lawfully possessed shall be returned to
22 its rightful owner, if known. If ownership is unknown, a reasonable
23 attempt shall be made by the law enforcement agency holding the
24 property to ascertain ownership of the property. After ninety (90)
25 days from the time:

26 (A) the rightful owner has been notified to take possession of the
27 property; or

28 (B) a reasonable effort has been made to ascertain ownership of
29 the property;

30 the law enforcement agency holding the property shall, at ~~such time~~
31 ~~as it is a~~ convenient ~~time~~, dispose of this property at a public
32 auction. The proceeds of this property shall be paid into the county
33 general fund.

34 (2) Except as provided in subsection (e), property, the possession
35 of which is unlawful, shall be destroyed by the law enforcement
36 agency holding it sixty (60) days after final disposition of the cause.

37 (3) A firearm that has been seized from a person who is dangerous
38 (as defined in IC 35-47-13-1) shall be retained, returned, or
39 disposed of in accordance with IC 35-47-13.

40 (d) If any property described in subsection (c) was admitted into
41 evidence in the cause, the property shall be disposed of in accordance
42 with an order of the court trying the cause.

43 (e) A law enforcement agency may destroy or cause to be destroyed
44 chemicals, ~~or~~ controlled substances, **or chemically contaminated**
45 **equipment (including drug paraphernalia as described in**
46 **IC 35-48-4-8.5)** associated with the illegal manufacture of drugs or
47 controlled substances without a court order if all the following
48 conditions are met:

49 (1) The law enforcement agency collects and preserves a sufficient

1 quantity of the chemicals, ~~or~~ controlled substances, **or chemically**
 2 **contaminated equipment** to demonstrate that the chemicals, ~~or~~
 3 controlled substances, ~~were or chemically contaminated~~
 4 **equipment was** associated with the illegal manufacture of drugs or
 5 controlled substances.

6 (2) The law enforcement agency takes photographs of the illegal
 7 drug manufacturing site that accurately depict the presence and
 8 quantity of chemicals, ~~and~~ controlled substances, **and chemically**
 9 **contaminated equipment.**

10 (3) The law enforcement agency completes a chemical inventory
 11 report that describes the type and quantities of chemicals, ~~and~~
 12 controlled substances, **and chemically contaminated equipment**
 13 present at the illegal manufacturing site.

14 The photographs and description of the property shall be admissible
 15 into evidence in place of the actual physical evidence.

16 (f) For purposes of preserving the record of any conviction on appeal,
 17 a photograph demonstrating the nature of the property, and an adequate
 18 description of the property must be obtained before the disposition of
 19 it. In the event of a retrial, the photograph and description of the
 20 property shall be admissible into evidence in place of the actual physical
 21 evidence. All other rules of law governing the admissibility of evidence
 22 shall apply to the photographs.

23 (g) The law enforcement agency disposing of property in any manner
 24 provided in subsection (b), (c), or (e) shall maintain certified records of
 25 any ~~such~~ disposition **under subsection (b), (c), or (e)**. Disposition by
 26 destruction of property shall be witnessed by two (2) persons who shall
 27 also attest to the destruction.

28 (h) This section does not affect the procedure for the disposition of
 29 firearms seized by a law enforcement agency.

30 (i) A law enforcement agency that disposes of property by auction
 31 under this section shall permanently stamp or otherwise permanently
 32 identify the property as property sold by the law enforcement agency.

33 (j) Upon motion of the prosecuting attorney, the court shall order
 34 property seized under IC 34-24-1 transferred, subject to the perfected
 35 liens or other security interests of any person in the property, to the
 36 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
 37 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
 38 by the United States Department of Justice.

39 SECTION 15. IC 35-38-2.6-1, AS AMENDED BY P.L.213-2005,
 40 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2006]: Sec. 1. (a) Except as provided in subsection (b), this
 42 chapter applies to the sentencing of a person convicted of:

43 (1) a felony whenever any part of the sentence may not be
 44 suspended under IC 35-50-2-2 or IC 35-50-2-2.1;

45 (2) a misdemeanor whenever any part of the sentence may not be
 46 suspended; or

47 (3) an offense described in ~~IC 35-50-2-2(b)(4)(Q)~~
 48 **IC 35-50-2-2(b)(4)(R)** (operating a vehicle while intoxicated with
 49 at least two (2) prior unrelated convictions), if the person:

1 (A) is required to serve the nonsuspendible part of the sentence
2 in a community corrections:

- 3 (i) work release program; or
4 (ii) program that uses electronic monitoring as a part of the
5 person's supervision; and

6 (B) participates in a court approved substance abuse program.

7 (b) This chapter does not apply to persons convicted of any of the
8 following:

- 9 (1) Sex crimes under IC 35-42-4 or IC 35-46-1-3.
10 (2) Except as provided in subsection (a)(3), any of the felonies
11 listed in IC 35-50-2-2(b)(4).
12 (3) An offense under IC 9-30-5-4.
13 (4) An offense under IC 9-30-5-5.

14 SECTION 16. IC 35-42-1-1 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A person who:

- 16 (1) knowingly or intentionally kills another human being;
17 (2) kills another human being while committing or attempting to
18 commit arson, burglary, child molesting, consumer product
19 tampering, criminal deviate conduct, kidnapping, rape, robbery, or
20 carjacking;
21 (3) kills another human being while committing or attempting to
22 commit:

23 (A) dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
24 ~~methamphetamine~~ (IC 35-48-4-1);

25 **(B) dealing in methamphetamine (IC 35-48-4-1.1);**

26 **(C) dealing in a schedule I, II, or III controlled substance**
27 **(IC 35-48-4-2);**

28 ~~(D)~~ **(D)** dealing in a schedule IV controlled substance
29 **(IC 35-48-4-3); or**

30 ~~(E)~~ **(E)** dealing in a schedule V controlled substance; or

31 (4) knowingly or intentionally kills a fetus that has attained viability
32 (as defined in IC 16-18-2-365);

33 commits murder, a felony.

34 SECTION 17. IC 35-45-6-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this
36 chapter:

37 "Documentary material" means any document, drawing, photograph,
38 recording, or other tangible item containing compiled data from which
39 information can be either obtained or translated into a usable form.

40 "Enterprise" means:

41 (1) a sole proprietorship, corporation, limited liability company,
42 partnership, business trust, or governmental entity; or

43 (2) a union, an association, or a group, whether a legal entity or
44 merely associated in fact.

45 "Pattern of racketeering activity" means engaging in at least two (2)
46 incidents of racketeering activity that have the same or similar intent,
47 result, accomplice, victim, or method of commission, or that are
48 otherwise interrelated by distinguishing characteristics that are not
49 isolated incidents. However, the incidents are a pattern of racketeering

1 activity only if at least one (1) of the incidents occurred after August 31,
 2 1980, and if the last of the incidents occurred within five (5) years after
 3 a prior incident of racketeering activity.

4 "Racketeering activity" means to commit, to attempt to commit, to
 5 conspire to commit a violation of, or aiding and abetting in a violation
 6 of any of the following:

7 (1) A provision of IC 23-2-1, or of a rule or order issued under
 8 IC 23-2-1.

9 (2) A violation of IC 35-45-9.

10 (3) A violation of IC 35-47.

11 (4) A violation of IC 35-49-3.

12 (5) Murder (IC 35-42-1-1).

13 (6) Battery as a Class C felony (IC 35-42-2-1).

14 (7) Kidnapping (IC 35-42-3-2).

15 (8) Child exploitation (IC 35-42-4-4).

16 (9) Robbery (IC 35-42-5-1).

17 (10) Carjacking (IC 35-42-5-2).

18 (11) Arson (IC 35-43-1-1).

19 (12) Burglary (IC 35-43-2-1).

20 (13) Theft (IC 35-43-4-2).

21 (14) Receiving stolen property (IC 35-43-4-2).

22 (15) Forgery (IC 35-43-5-2).

23 (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).

24 (17) Bribery (IC 35-44-1-1).

25 (18) Official misconduct (IC 35-44-1-2).

26 (19) Conflict of interest (IC 35-44-1-3).

27 (20) Perjury (IC 35-44-2-1).

28 (21) Obstruction of justice (IC 35-44-3-4).

29 (22) Intimidation (IC 35-45-2-1).

30 (23) Promoting prostitution (IC 35-45-4-4).

31 (24) Promoting professional gambling (IC 35-45-5-4).

32 (25) Dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
 33 ~~methamphetamine~~ (IC 35-48-4-1).

34 **(26) Dealing in methamphetamine (IC 35-48-4-1.1).**

35 **(27) Dealing in a schedule I, II, or III controlled substance**
 36 **(IC 35-48-4-2).**

37 ~~(27)~~ **(28) Dealing in a schedule IV controlled substance**
 38 **(IC 35-48-4-3).**

39 ~~(28)~~ **(29) Dealing in a schedule V controlled substance**
 40 **(IC 35-48-4-4).**

41 ~~(29)~~ **(30) Dealing in marijuana, hash oil, or hashish**
 42 **(IC 35-48-4-10).**

43 ~~(30)~~ **(31) Money laundering (IC 35-45-15-5).**

44 ~~(31)~~ **(32) A violation of IC 35-47.5-5.**

45 SECTION 18. IC 35-46-1-8, AS AMENDED BY P.L.2-2005,
 46 SECTION 126, IS AMENDED TO READ AS FOLLOWS
 47 [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) A person at least eighteen
 48 (18) years of age who knowingly or intentionally encourages, aids,
 49 induces, or causes a person less than eighteen (18) years of age to

1 commit an act of delinquency (as defined by IC 31-37-1 or IC 31-37-2)
 2 commits contributing to delinquency, a Class A misdemeanor.

3 (b) However, the offense described in subsection (a) is a Class C
 4 felony:

5 (1) if:

6 (A) the person committing the offense is at least twenty-one (21)
 7 years of age and knowingly or intentionally furnishes:

8 (i) an alcoholic beverage to a person less than eighteen (18)
 9 years of age in violation of IC 7.1-5-7-8 when the person
 10 committing the offense knew or reasonably should have known
 11 that the person furnished the alcoholic beverage was less than
 12 eighteen (18) years of age; or

13 (ii) a controlled substance (as defined in IC 35-48-1-9) or a
 14 drug (as defined in IC 9-13-2-49.1) in violation of Indiana law;
 15 and

16 (B) the consumption, ingestion, or use of the alcoholic beverage,
 17 controlled substance, or drug is the proximate cause of the death
 18 of any person; or

19 (2) if the person committing the offense knowingly or intentionally
 20 encourages, aids, induces, or causes a person less than eighteen (18)
 21 years of age to commit an act that would be a felony if committed
 22 by an adult under any of the following:

23 (A) IC 35-48-4-1.

24 (B) **IC 35-48-4-1.1.**

25 (C) IC 35-48-4-2.

26 ~~(D)~~ (D) IC 35-48-4-3.

27 ~~(E)~~ (E) IC 35-48-4-4.

28 ~~(F)~~ (F) IC 35-48-4-4.5.

29 ~~(G)~~ (G) IC 35-48-4-4.6.

30 ~~(H)~~ (H) IC 35-48-4-5.

31 SECTION 19. IC 35-46-6-1 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. As used in this
 33 chapter, "model glue" means a glue or cement containing

34 ~~(1)~~ toluene or acetone, or both. ~~or~~

35 ~~(2) another chemical having the property of releasing toxic vapors.~~

36 SECTION 20. IC 35-46-6-2 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. A person who, with
 38 intent to cause a condition of intoxication, euphoria, excitement,
 39 exhilaration, stupefaction, or dulling of the senses, ingests or inhales the
 40 fumes of:

41 (1) model glue; or

42 (2) a substance that contains:

43 (A) toluene;

44 (B) acetone;

45 (C) benzene;

46 (D) N-butyl nitrite;

47 (E) any aliphatic nitrite, unless prescribed by a physician; ~~or~~

48 (F) butane;

49 (G) **amyl butrate;**

- 1 **(H) isobutyl nitrate;**
- 2 **(I) freon;**
- 3 **(J) chlorinated hydrocarbons;**
- 4 **(K) methylene chloride;**
- 5 **(L) hexane;**
- 6 **(M) ether;**
- 7 **(N) chloroform; or**
- 8 **(O) halothane; or**
- 9 **(3) any other chemical having the property of releasing toxic**
- 10 **vapors;**

11 commits **inhaling toxic vapors**, a Class B misdemeanor.

12 SECTION 21. IC 35-47-4-5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) As used in this
 14 section, "serious violent felon" means a person who has been convicted
 15 of:

- 16 (1) committing a serious violent felony in:
 - 17 (A) Indiana; or
 - 18 (B) any other jurisdiction in which the elements of the crime for
 - 19 which the conviction was entered are substantially similar to the
 - 20 elements of a serious violent felony; or
- 21 (2) attempting to commit or conspiring to commit a serious violent
- 22 felony in:
 - 23 (A) Indiana as provided under IC 35-41-5-1 or IC 35-41-5-2; or
 - 24 (B) any other jurisdiction in which the elements of the crime for
 - 25 which the conviction was entered are substantially similar to the
 - 26 elements of attempting to commit or conspiring to commit a
 - 27 serious violent felony.
- 28 (b) As used in this section, "serious violent felony" means:
 - 29 (1) murder (IC 35-42-1-1);
 - 30 (2) voluntary manslaughter (IC 35-42-1-3);
 - 31 (3) reckless homicide not committed by means of a vehicle
 - 32 (IC 35-42-1-5);
 - 33 (4) battery as a:
 - 34 (A) Class A felony (IC 35-42-2-1(a)(5));
 - 35 (B) Class B felony (IC 35-42-2-1(a)(4)); or
 - 36 (C) Class C felony (IC 35-42-2-1(a)(3));
 - 37 (5) aggravated battery (IC 35-42-2-1.5);
 - 38 (6) kidnapping (IC 35-42-3-2);
 - 39 (7) criminal confinement (IC 35-42-3-3);
 - 40 (8) rape (IC 35-42-4-1);
 - 41 (9) criminal deviate conduct (IC 35-42-4-2);
 - 42 (10) child molesting (IC 35-42-4-3);
 - 43 (11) sexual battery as a Class C felony (IC 35-42-4-8);
 - 44 (12) robbery (IC 35-42-5-1);
 - 45 (13) carjacking (IC 35-42-5-2);
 - 46 (14) arson as a Class A felony or Class B felony (IC 35-43-1-1(a));
 - 47 (15) burglary as a Class A felony or Class B felony (IC 35-43-2-1);
 - 48 (16) assisting a criminal as a Class C felony (IC 35-44-3-2);
 - 49 (17) resisting law enforcement as a Class B felony or Class C

- 1 felony (IC 35-44-3-3);
 2 (18) escape as a Class B felony or Class C felony (IC 35-44-3-5);
 3 (19) trafficking with an inmate as a Class C felony (IC 35-44-3-9);
 4 (20) criminal gang intimidation (IC 35-45-9-4);
 5 (21) stalking as a Class B felony or Class C felony
 6 (IC 35-45-10-5);
 7 (22) incest (IC 35-46-1-3);
 8 (23) dealing in or manufacturing cocaine ~~or~~ a narcotic drug ~~or~~
 9 ~~methamphetamine~~ (IC 35-48-4-1);
 10 (24) **dealing in methamphetamine (IC 35-48-4-1.1)**;
 11 **(25) dealing in a schedule I, II, or III controlled substance**
 12 **(IC 35-48-4-2)**;
 13 ~~(25)~~ **(26) dealing in a schedule IV controlled substance**
 14 **(IC 35-48-4-3)**; or
 15 ~~(26)~~ **(27) dealing in a schedule V controlled substance**
 16 **(IC 35-48-4-4)**.
 17 (c) A serious violent felon who knowingly or intentionally possesses
 18 a firearm commits unlawful possession of a firearm by a serious violent
 19 felon, a Class B felony.
 20 SECTION 22. IC 35-48-4-1 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) A person who:
 22 (1) knowingly or intentionally:
 23 (A) manufactures;
 24 (B) finances the manufacture of;
 25 (C) delivers; or
 26 (D) finances the delivery of;
 27 cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~; pure or
 28 adulterated, classified in schedule I or II; or
 29 (2) possesses, with intent to:
 30 (A) manufacture;
 31 (B) finance the manufacture of;
 32 (C) deliver; or
 33 (D) finance the delivery of;
 34 cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~; pure or
 35 adulterated, classified in schedule I or II;
 36 commits dealing in cocaine ~~or~~ a narcotic drug, ~~or~~ ~~methamphetamine~~; a
 37 Class B felony, except as provided in subsection (b).
 38 (b) The offense is a Class A felony if:
 39 (1) the amount of the drug involved weighs three (3) grams or
 40 more;
 41 (2) the person:
 42 (A) delivered; or
 43 (B) financed the delivery of;
 44 the drug to a person under eighteen (18) years of age at least three
 45 (3) years junior to the person; or
 46 (3) the person manufactured, delivered, or financed the delivery of
 47 the drug:
 48 (A) on a school bus; or
 49 (B) in, on, or within one thousand (1,000) feet of:

- 1 (i) school property;
- 2 (ii) a public park;
- 3 (iii) a family housing complex; or
- 4 (iv) a youth program center.

5 SECTION 23. IC 35-48-4-1.1 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2006]: **Sec. 1.1. (a) A person who:**

8 **(1) knowingly or intentionally:**

- 9 **(A) manufactures;**
- 10 **(B) finances the manufacture of;**
- 11 **(C) delivers; or**
- 12 **(D) finances the delivery of;**
- 13 **methamphetamine, pure or adulterated; or**

14 **(2) possesses, with intent to:**

- 15 **(A) manufacture;**
- 16 **(B) finance the manufacture of;**
- 17 **(C) deliver; or**
- 18 **(D) finance the delivery of;**
- 19 **methamphetamine, pure or adulterated;**

20 **commits dealing in methamphetamine, a Class B felony, except as**
21 **provided in subsection (b).**

22 **(b) The offense is a Class A felony if:**

- 23 **(1) the amount of the drug involved weighs three (3) grams or**
24 **more;**
- 25 **(2) the person:**
 - 26 **(A) delivered; or**
 - 27 **(B) financed the delivery of;**
- 28 **the drug to a person under eighteen (18) years of age at least**
29 **three (3) years junior to the person; or**
- 30 **(3) the person manufactured, delivered, or financed the**
31 **delivery of the drug:**
 - 32 **(A) on a school bus; or**
 - 33 **(B) in, on, or within one thousand (1,000) feet of:**
 - 34 **(i) school property;**
 - 35 **(ii) a public park;**
 - 36 **(iii) a family housing complex; or**
 - 37 **(iv) a youth program center.**

38 SECTION 24. IC 35-48-4-6 IS AMENDED TO READ AS
39 FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 6. (a) A person who,**
40 **without a valid prescription or order of a practitioner acting in the**
41 **course of the practitioner's professional practice, knowingly or**
42 **intentionally possesses cocaine (pure or adulterated) or a narcotic drug**
43 **(pure or adulterated) classified in schedule I or II, or methamphetamine**
44 **(pure or adulterated) commits possession of cocaine or a narcotic drug,**
45 **or methamphetamine, a Class D felony, except as provided in**
46 **subsection (b).**

47 **(b) The offense is:**

- 48 **(1) a Class C felony if:**
 - 49 **(A) the amount of the drug involved (pure or adulterated) weighs**

- 1 three (3) grams or more; or
 2 (B) the person was also in possession of a firearm (as defined in
 3 IC 35-47-1-5);
 4 (2) a Class B felony if the person in possession of the cocaine **or**
 5 narcotic drug ~~or methamphetamine~~ possesses less than three (3)
 6 grams of pure or adulterated cocaine **or** a narcotic drug: ~~or~~
 7 ~~methamphetamine~~:
 8 (A) on a school bus; or
 9 (B) in, on, or within one thousand (1,000) feet of:
 10 (i) school property;
 11 (ii) a public park;
 12 (iii) a family housing complex; or
 13 (iv) a youth program center; and
 14 (3) a Class A felony if the person possesses the cocaine **or** narcotic
 15 drug ~~or methamphetamine~~ in an amount (pure or adulterated)
 16 weighing at least three (3) grams:
 17 (A) on a school bus; or
 18 (B) in, on, or within one thousand (1,000) feet of:
 19 (i) school property;
 20 (ii) a public park;
 21 (iii) a family housing complex; or
 22 (iv) a youth program center.
- 23 SECTION 25. IC 35-48-4-6.1 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2006]: **Sec. 6.1. (a) A person who, without a**
 26 **valid prescription or order of a practitioner acting in the course of**
 27 **the practitioner's professional practice, knowingly or intentionally**
 28 **possesses methamphetamine (pure or adulterated) commits**
 29 **possession of methamphetamine, a Class D felony, except as**
 30 **provided in subsection (b).**
- 31 **(b) The offense is:**
 32 **(1) a Class C felony if:**
 33 **(A) the amount of the drug involved (pure or adulterated)**
 34 **weighs three (3) grams or more; or**
 35 **(B) the person was also in possession of a firearm (as defined**
 36 **in IC 35-47-1-5);**
 37 **(2) a Class B felony if the person in possession of the**
 38 **methamphetamine possesses less than three (3) grams of pure**
 39 **or adulterated methamphetamine:**
 40 **(A) on a school bus; or**
 41 **(B) in, on, or within one thousand (1,000) feet of:**
 42 **(i) school property;**
 43 **(ii) a public park;**
 44 **(iii) a family housing complex; or**
 45 **(iv) a youth program center; and**
 46 **(3) a Class A felony if the person possesses the**
 47 **methamphetamine in an amount (pure or adulterated)**
 48 **weighing at least three (3) grams:**
 49 **(A) on a school bus; or**

- 1 **(B) in, on, or within one thousand (1,000) feet of:**
 2 **(i) school property;**
 3 **(ii) a public park;**
 4 **(iii) a family housing complex; or**
 5 **(iv) a youth program center.**

6 SECTION 26. IC 35-48-4-14.5, AS AMENDED BY P.L.192-2005,
 7 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2006]: Sec. 14.5. (a) As used in this section, "chemical
 9 reagents or precursors" refers to one (1) or more of the following:

- 10 (1) Ephedrine.
 11 (2) Pseudoephedrine.
 12 (3) Phenylpropanolamine.
 13 (4) The salts, isomers, and salts of isomers of a substance identified
 14 in subdivisions (1) through (3).
 15 (5) Anhydrous ammonia or ammonia solution (as defined in
 16 IC 22-11-20-1).
 17 (6) Organic solvents.
 18 (7) Hydrochloric acid.
 19 (8) Lithium metal.
 20 (9) Sodium metal.
 21 (10) Ether.
 22 (11) Sulfuric acid.
 23 (12) Red phosphorous.
 24 (13) Iodine.
 25 (14) Sodium hydroxide (lye).
 26 (15) Potassium dichromate.
 27 (16) Sodium dichromate.
 28 (17) Potassium permanganate.
 29 (18) Chromium trioxide.
 30 (19) Benzyl cyanide.
 31 (20) Phenylacetic acid and its esters or salts.
 32 (21) Piperidine and its salts.
 33 (22) Methylamine and its salts.
 34 (23) Isosafrole.
 35 (24) Safrole.
 36 (25) Piperonal.
 37 (26) Hydriodic acid.
 38 (27) Benzaldehyde.
 39 (28) Nitroethane.
 40 (29) Gamma-butyrolactone.
 41 (30) White phosphorus.
 42 (31) Hypophosphorous acid and its salts.
 43 (32) Acetic anhydride.
 44 (33) Benzyl chloride.
 45 (34) Ammonium nitrate.
 46 (35) Ammonium sulfate.
 47 (36) Hydrogen peroxide.
 48 (37) Thionyl chloride.
 49 (38) Ethyl acetate.

- 1 (39) Pseudoephedrine hydrochloride.
- 2 (b) A person who possesses more than ten (10) grams of ephedrine,
3 pseudoephedrine, or phenylpropanolamine, pure or adulterated,
4 commits a Class D felony. However, the offense is a Class C felony if
5 the person possessed:
- 6 (1) a firearm while possessing more than ten (10) grams of
7 ephedrine, pseudoephedrine, or phenylpropanolamine, pure or
8 adulterated; or
- 9 (2) more than ten (10) grams of ephedrine, pseudoephedrine, or
10 phenylpropanolamine, pure or adulterated, in, on, or within one
11 thousand (1,000) feet of:
- 12 (A) school property;
13 (B) a public park;
14 (C) a family housing complex; or
15 (D) a youth program center.
- 16 (c) A person who possesses anhydrous ammonia or ammonia solution
17 (as defined in IC 22-11-20-1) with the intent to manufacture
18 methamphetamine ~~or amphetamine~~, schedule II controlled ~~substance~~
19 **substances** under IC 35-48-2-6, commits a Class D felony. However,
20 the offense is a Class C felony if the person possessed:
- 21 (1) a firearm while possessing anhydrous ammonia or ammonia
22 solution (as defined in IC 22-11-20-1) with intent to manufacture
23 methamphetamine ~~or amphetamine~~, schedule II controlled
24 ~~substance substances~~ under IC 35-48-2-6; or
- 25 (2) anhydrous ammonia or ammonia solution (as defined in
26 IC 22-11-20-1) with intent to manufacture methamphetamine ~~or~~
27 **amphetamine**, schedule II controlled ~~substance substances~~ under
28 IC 35-48-2-6, in, on, or within one thousand (1,000) feet of:
- 29 (A) school property;
30 (B) a public park;
31 (C) a family housing complex; or
32 (D) a youth program center.
- 33 (d) Subsection (b) does not apply to a:
- 34 (1) licensed health care provider, pharmacist, retail distributor,
35 wholesaler, manufacturer, warehouseman, or common carrier or an
36 agent of any of these persons if the possession is in the regular
37 course of lawful business activities; or
- 38 (2) person who possesses more than ten (10) grams of a substance
39 described in subsection (b) if the substance is possessed under
40 circumstances consistent with typical medicinal or household use,
41 including:
- 42 (A) the location in which the substance is stored;
43 (B) the possession of the substance in a variety of:
44 (i) strengths;
45 (ii) brands; or
46 (iii) types; or
47 (C) the possession of the substance:
48 (i) with different expiration dates; or
49 (ii) in forms used for different purposes.

1 (e) A person who possesses two (2) or more chemical reagents or
2 precursors with the intent to manufacture

3 ~~(1) Methcathinone, a schedule I controlled substance under~~
4 ~~IC 35-48-2-4;~~

5 ~~(2) Methamphetamine, a schedule H controlled substance under~~
6 ~~IC 35-48-2-6;~~

7 ~~(3) Amphetamine, a schedule H controlled substance under~~
8 ~~IC 35-48-2-6; or~~

9 ~~(4) Phentermine, a schedule IV controlled substance under~~
10 ~~IC 35-48-2-10;~~

11 **a controlled substance** commits a Class D felony.

12 (f) An offense under subsection (e) is a Class C felony if the person
13 possessed:

14 (1) a firearm while possessing two (2) or more chemical reagents
15 or precursors with intent to manufacture ~~methamphetamine, a~~
16 ~~schedule H controlled substance; under IC 35-48-2-6; or~~

17 (2) two (2) or more chemical reagents or precursors with intent to
18 manufacture ~~methamphetamine, a schedule H controlled substance~~
19 ~~under IC 35-48-2-6~~ in, on, or within one thousand (1,000) feet of:

20 (A) school property;

21 (B) a public park;

22 (C) a family housing complex; or

23 (D) a youth program center.

24 (g) A person who sells, transfers, distributes, or furnishes a chemical
25 reagent or precursor to another person with knowledge or the intent that
26 the recipient will use the chemical reagent or precursors to manufacture
27 ~~methamphetamine, methcathinone, amphetamine, or phentermine a~~
28 **controlled substance** commits unlawful sale of a precursor, a Class D
29 felony.

30 SECTION 27. IC 35-48-4-14.7, AS ADDED BY P.L.192-2005,
31 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2006]: Sec. 14.7. (a) This section does not apply to the
33 following:

34 (1) Ephedrine or pseudoephedrine dispensed pursuant to a
35 prescription.

36 (2) The sale of a drug containing ephedrine or pseudoephedrine to
37 a licensed health care provider, pharmacist, retail distributor,
38 wholesaler, manufacturer, or an agent of any of these persons if the
39 sale occurs in the regular course of lawful business activities.
40 However, a retail distributor, wholesaler, or manufacturer is
41 required to report a suspicious order to the state police department
42 in accordance with subsection (f).

43 (3) The sale of a drug containing ephedrine or pseudoephedrine by
44 a person who does not sell exclusively to walk-in customers for the
45 personal use of the walk-in customers. However, if the person
46 described in this subdivision is a retail distributor, wholesaler, or
47 manufacturer, the person is required to report a suspicious order to
48 the state police department in accordance with subsection (f).

49 (b) The following definitions apply throughout this section:

- 1 (1) "Constant video monitoring" means the surveillance by an
2 automated camera that:
- 3 (A) records at least one (1) photograph or digital image every ten
4 (10) seconds;
- 5 (B) retains a photograph or digital image for at least seventy-two
6 (72) hours;
- 7 (C) has sufficient resolution and magnification to permit the
8 identification of a person in the area under surveillance; and
- 9 (D) stores a recorded photograph or digital image at a location
10 that is immediately accessible to a law enforcement officer.
- 11 (2) "Convenience package" means a package that contains a drug
12 having as an active ingredient not more than one hundred twenty
13 (120) milligrams of ephedrine or pseudoephedrine, or both.
- 14 (3) "Ephedrine" means pure or adulterated ephedrine.
- 15 (4) "Pseudoephedrine" means pure or adulterated pseudoephedrine.
- 16 (5) "Suspicious order" means a sale or transfer of a drug containing
17 ephedrine or pseudoephedrine if the sale or transfer:
- 18 (A) is a sale or transfer that the retail distributor, wholesaler, or
19 manufacturer is required to report to the United States Drug
20 Enforcement Administration;
- 21 (B) appears suspicious to the retail distributor, wholesaler, or
22 manufacturer in light of the recommendations contained in
23 Appendix A of the report to the United States attorney general by
24 the suspicious orders task force under the federal Comprehensive
25 Methamphetamine Control Act of 1996; or
- 26 (C) is for cash or a money order in a total amount of at least two
27 hundred dollars (\$200).
- 28 (6) "Unusual theft" means the theft or unexplained disappearance
29 from a particular retail store of drugs containing ten (10) grams or
30 more of ephedrine, pseudoephedrine, or both in a twenty-four (24)
31 hour period.
- 32 (c) This subsection does not apply to a convenience package. A
33 person may sell a drug that contains the active ingredient of ephedrine,
34 pseudoephedrine, or both only if the person complies with the following
35 conditions:
- 36 (1) The person does not sell the drug to a person less than eighteen
37 (18) years of age.
- 38 (2) The person does not sell drugs containing more than three (3)
39 grams of ephedrine or pseudoephedrine, or both in one (1)
40 transaction.
- 41 (3) The person requires:
- 42 (A) the purchaser to produce a state or federal identification card;
- 43 (B) the purchaser to complete a paper or an electronic log in a
44 format approved by the state police department with the
45 purchaser's name, address, and driver's license or other
46 identification number; and
- 47 (C) the clerk who is conducting the transaction to initial or
48 electronically record the clerk's identification on the log.
- 49 Records from the completion of a log must be retained for at least

1 two (2) years. ~~and may be inspected by~~ A law enforcement officer
 2 **has the right to inspect and copy a log or the records from the**
 3 **completion of a log** in accordance with state and federal law. A
 4 **person may not sell or release a log or the records from the**
 5 **completion of a log for a commercial purpose. The Indiana**
 6 **criminal justice institute may obtain information concerning a**
 7 **log or the records from the completion of a log from a law**
 8 **enforcement officer if the information may not be used to**
 9 **identify a specific individual and is used only for statistical**
 10 **purposes.** A retailer who in good faith releases information
 11 maintained under this subsection is immune from civil liability
 12 unless the release constitutes gross negligence or intentional,
 13 wanton, or willful misconduct. This subdivision expires June 30,
 14 2008.

15 (4) The person stores the drug:

16 (A) behind a counter in an area inaccessible to a customer or in
 17 a locked display case that makes the drug unavailable to a
 18 customer without the assistance of an employee; or

19 (B) directly in front of the pharmacy counter in the direct line of
 20 sight of an employee at the pharmacy counter, in an area under
 21 constant video monitoring, if the drug is sold in a retail
 22 establishment that:

23 (i) is a pharmacy; or

24 (ii) contains a pharmacy that is open for business.

25 (d) A person may not purchase drugs containing more than three (3)
 26 grams of ephedrine, pseudoephedrine, or both in one (1) week.

27 (e) This subsection only applies to convenience packages. A person
 28 may not sell drugs containing more than one hundred twenty (120)
 29 milligrams of ephedrine or pseudoephedrine, or both in any one (1)
 30 transaction if the drugs are sold in convenience packages. A person who
 31 sells convenience packages must secure the convenience packages in at
 32 least one (1) of the following ways:

33 (1) The convenience package must be stored not more than thirty
 34 (30) feet away from a checkout station or counter and must be in
 35 the direct line of sight of an employee at the checkout station or
 36 counter.

37 (2) The convenience package must be protected by a reliable
 38 anti-theft device that uses package tags and detection alarms
 39 designed to prevent theft.

40 (3) The convenience package must be stored in restricted access
 41 shelving that permits a purchaser to remove not more than one (1)
 42 package every fifteen (15) seconds.

43 (4) The convenience package must be stored in an area that is under
 44 constant video monitoring, and a sign placed near the convenience
 45 package must warn that the area is under constant video
 46 monitoring.

47 (f) A retail distributor, wholesaler, or manufacturer shall report a
 48 suspicious order to the state police department in writing.

49 (g) Not later than three (3) days after the discovery of an unusual theft

1 at a particular retail store, the retailer shall report the unusual theft to
 2 the state police department in writing. If three (3) unusual thefts occur
 3 in a thirty (30) day period at a particular retail store, the retailer shall,
 4 for at least one hundred eighty (180) days after the date of the last
 5 unusual theft, locate all drugs containing ephedrine or pseudoephedrine
 6 at that particular retail store behind a counter in an area inaccessible to
 7 a customer or in a locked display case that makes the drug unavailable
 8 to customers without the assistance of an employee.

9 (h) A unit (as defined in IC 36-1-2-23) may not adopt an ordinance
 10 after February 1, 2005, that is more stringent than this section.

11 (i) A person who knowingly or intentionally violates this section
 12 commits a Class C misdemeanor. However, the offense is a Class A
 13 misdemeanor if the person has a prior unrelated conviction under this
 14 section.

15 (j) Before June 30, 2007, the state police department shall submit a
 16 report to the legislative council detailing the effectiveness of this section
 17 in reducing the illicit production of methamphetamine. The report must
 18 describe the number of arrests or convictions that are attributable to the
 19 identification and logging requirements contained in this section, and
 20 must include recommendations for future action. The report must be in
 21 an electronic format under IC 5-14-6.

22 SECTION 28. IC 35-50-2-2, AS AMENDED BY P.L.213-2005,
 23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 UPON PASSAGE]: Sec. 2. (a) The court may suspend any part of a
 25 sentence for a felony, except as provided in this section or in section 2.1
 26 of this chapter.

27 (b) With respect to the following crimes listed in this subsection, the
 28 court may suspend only that part of the sentence that is in excess of the
 29 minimum sentence, unless the court has approved placement of the
 30 offender in a forensic diversion program under IC 11-12-3.7:

31 (1) The crime committed was a Class A or Class B felony and the
 32 person has a prior unrelated felony conviction.

33 (2) The crime committed was a Class C felony and less than seven
 34 (7) years have elapsed between the date the person was discharged
 35 from probation, imprisonment, or parole, whichever is later, for a
 36 prior unrelated felony conviction and the date the person committed
 37 the Class C felony for which the person is being sentenced.

38 (3) The crime committed was a Class D felony and less than three
 39 (3) years have elapsed between the date the person was discharged
 40 from probation, imprisonment, or parole, whichever is later, for a
 41 prior unrelated felony conviction and the date the person committed
 42 the Class D felony for which the person is being sentenced.
 43 However, the court may suspend the minimum sentence for the
 44 crime only if the court orders home detention under IC 35-38-1-21
 45 or IC 35-38-2.5-5 instead of the minimum sentence specified for
 46 the crime under this chapter.

47 (4) The felony committed was:

48 (A) murder (IC 35-42-1-1);

49 (B) battery (IC 35-42-2-1) with a deadly weapon or battery

- 1 causing death;
- 2 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 3 (D) kidnapping (IC 35-42-3-2);
- 4 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 5 (F) rape (IC 35-42-4-1) as a Class A felony;
- 6 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A felony;
- 7 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 8 felony;
- 9 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 10 with a deadly weapon;
- 11 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 12 injury;
- 13 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or
- 14 with a deadly weapon;
- 15 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 16 weapon;
- 17 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 18 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 19 (O) dealing in cocaine **or** a narcotic drug **or** ~~methamphetamine~~
- 20 (IC 35-48-4-1) if the court finds the person possessed a firearm
- 21 (as defined in IC 35-47-1-5) at the time of the offense, or the
- 22 person delivered or intended to deliver to a person under eighteen
- 23 (18) years of age at least three (3) years junior to the person and
- 24 was on a school bus or within one thousand (1,000) feet of:
- 25 (i) school property;
- 26 (ii) a public park;
- 27 (iii) a family housing complex; or
- 28 (iv) a youth program center;
- 29 **(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court**
- 30 **finds the person possessed a firearm (as defined in**
- 31 **IC 35-47-1-5) at the time of the offense, or the person**
- 32 **delivered or intended to deliver the methamphetamine pure**
- 33 **or adulterated to a person under eighteen (18) years of age**
- 34 **at least three (3) years junior to the person and was on a**
- 35 **school bus or within one thousand (1,000) feet of:**
- 36 **(i) school property;**
- 37 **(ii) a public park;**
- 38 **(iii) a family housing complex; or**
- 39 **(iv) a youth program center;**
- 40 **(Q) dealing in a schedule I, II, or III controlled substance (IC**
- 41 **35-48-4-2) if the court finds the person possessed a firearm (as**
- 42 **defined in IC 35-47-1-5) at the time of the offense, or the person**
- 43 **delivered or intended to deliver to a person under eighteen (18)**
- 44 **years of age at least three (3) years junior to the person and was**
- 45 **on a school bus or within one thousand (1,000) feet of:**
- 46 **(i) school property;**
- 47 **(ii) a public park;**
- 48 **(iii) a family housing complex; or**
- 49 **(iv) a youth program center;**

1 ~~(R)~~ **(R)** an offense under IC 9-30-5 (operating a vehicle while
2 intoxicated) and the person who committed the offense has
3 accumulated at least two (2) prior unrelated convictions under
4 IC 9-30-5;

5 ~~(S)~~ **(S)** an offense under IC 9-30-5-5(b) (operating a vehicle
6 while intoxicated causing death); or

7 ~~(T)~~ **(T)** aggravated battery (IC 35-42-2-1.5).

8 (c) Except as provided in subsection (e), whenever the court suspends
9 a sentence for a felony, it shall place the person on probation under
10 IC 35-38-2 for a fixed period to end not later than the date that the
11 maximum sentence that may be imposed for the felony will expire.

12 (d) The minimum sentence for a person convicted of voluntary
13 manslaughter may not be suspended unless the court finds at the
14 sentencing hearing that the crime was not committed by means of a
15 deadly weapon.

16 (e) Whenever the court suspends that part of an offender's (as defined
17 in IC 5-2-12-4) sentence that is suspendible under subsection (b), the
18 court shall place the offender on probation under IC 35-38-2 for not
19 more than ten (10) years.

20 (f) An additional term of imprisonment imposed under IC 35-50-2-11
21 may not be suspended.

22 (g) A term of imprisonment imposed under IC 35-47-10-6 or
23 IC 35-47-10-7 may not be suspended if the commission of the offense
24 was knowing or intentional.

25 (h) A term of imprisonment imposed for an offense under
26 IC 35-48-4-6(b)(1)(B) **or IC 35-48-4-6.1(b)(1)(B)** may not be
27 suspended.

28 **SECTION 29. [EFFECTIVE JULY 1, 2006] IC 35-48-4-1.1 and**
29 **IC 35-48-4-6.1, both as added by this act, and IC 35-48-4-1,**
30 **IC 35-48-4-6, IC 35-48-4-14.5, and IC 35-48-4-14.7, all as amended**
31 **by this act, apply only to crimes committed after June 30, 2006.**

32 **SECTION 30. An emergency is declared for this act.**
 (Reference is to ESB 193 as printed February 24, 2006.)

Conference Committee Report
on
Engrossed Senate Bill 193

Signed by:

Senator Bray
Chairperson

Representative Foley

Senator Hume

Representative Van Haften

Senate Conferees

House Conferees